FILED
FEB 6 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 671

CENTRAL-STATES CORPORATION, *Petitioner*

v.

TRINITY UNIVERSAL INSURANCE COMPANY, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF OF PETITIONER

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ARGUMENT

KIPP v. GOFFE & CARKENER, 144 Kan. 95, 58 P. (2d) 102 (1936), DOES NOT HOLD THAT THE UNIFORM WAREHOUSE RECEIPTS ACT (CHAPTER 82, KANSAS GENERAL STATUTES, 1949), AND IN PARTICULAR, SECTION 82-120 THEREOF, IS INAPPLICABLE TO GRAIN TRANSACTIONS. SECTION 82-120 DOES CONTROL THE QUESTION HERE IN CONTROVERSY.

Section 82-120 provides that:

> "A warehouseman shall be liable *to the holder of a receipt* for damages caused by the non-

existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue." (Italics supplied.)

As pointed out in Part I.A. of the Petition's Reasons for Granting Writ, every court which has had occasion to consider the problem has ruled that the language quoted authorized recovery against a warehouseman's surety on receipts issued for non-existent goods.

The trial court, however, was apparently of the conviction, and it is the respondent's contention herein, that all the provisions of the Uniform Warehouse Receipts Act, including Section 82-120, were declared to be inapplicable to grain transactions by the Supreme Court of Kansas in *Kipp* v. *Goffe & Carkener*, 144 Kan. 95, 58 P. (2d) 102 (1936). This view is founded upon the following excerpt from that decision, quoted by the respondent on page 6 of its brief:

"Our legislature also enacted the 'warehouse receipts act', which had been drafted by the Commission on uniform laws (Laws 1909, ch. 262), *and supplemented that by a later Act* (Laws 1927, ch. 340), *which specifically provided* (Sec. 11) *that it shall not be construed as in any way affecting, altering, or amending chapter 34 of our Revised Statutes of 1923.* So, while these general warehouse acts appear to overlap some of the sections of our statutes hereinbefore referred to relating to the inspection, handling, and storage of grain, the Legislature has kept them fairly well segregated.

"Chapter 194 of the Laws of 1931, R.S., 1933 Supp., 34-223, *et seq.*, was in force during the time

> of the transactions involved in this action, and we regard it as being the statute necessary to be considered in connection with the evidence in this case in determining whether plaintiff stored or sold his wheat to Dillon." (Italics supplied.)

Now it should be self-evident, even to a cursory reader, that "fairly well segregated" is not synonymous with "completely segregated." But when one analyzes the excerpt set forth above and particularly the words in italics one cannot but feel shocked at the manner in which black has been proclaimed to be white.

The statute referred to in the italicized words is Kan. G.S., Sections 82-161 to 82-171, which was enacted in 1927. Section 82-120 first became law in 1909. Section 82-171 (which is the Section 11 referred to above) is reproduced as follows in the Kansas statute book:

> "CONSTRUCTION OF §§ 82-161 TO 82-171. This act shall not be construed as in any way affecting, altering or amending chapter 34, *or of article 1 [82-101 to 82-160] of Chapter 82, Revised Statutes of Kansas for 1923.*" (Italics supplied.)

The *non-italicized* portion of Section 82-171, above, was referred to in the quotation from the *Kipp* case. The *italicized* portion was not mentioned for the very excellent reason that it had no relevance to the question then before the Kansas Supreme Court. Sections 82-161 to 82-171 relate to the bonding and licensing of warehousemen. This field, in the case of grain warehousemen, had been completely covered by chapter 34, and the Kansas Supreme Court so expressly held in a case involving primarily the

construction to be given to a transaction with an unlicensed warehouseman. As to all other matters falling within the scope of Sections 82-101 to 82-160, the legislature of the State of Kansas intended and declared them to be unaffected in any way by Sections 82-161 to 82-171. In other words, Section 82-120 continued to be the law pertinent to all cases involving the issuance of warehouse receipts for non-existent goods. Surely no other interpretation can be given to Section 82-171, *which explicitly states that nothing therein contained shall affect, alter, or amend Sections 82-101 to 82-160.*

Certainly Sections 82-101 to 82-160 were not enacted merely as an exercise in rhetoric. They were obviously meant to accomplish some purpose, and, although no Kansas case is to be found on the subject, at least three other States have held that statutes identical with Section 82-120 warranted recovery against a warehouseman's surety on receipts issued for non-existent goods. The contention that the *Kipp* case dictates a contrary result requires a reading of that decision entirely out of context and is based upon the unwarranted assumption that Kansas law in the field of warehouse receipts is somehow unique. Section 82-120 is not only the law of Kansas but of most, if not all, of the States of the Union. In construing it, this Honorable Court has said:

> " * * * in order to accomplish the beneficient object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an offshoot of local law." *Commercial National Bank of*

New Orleans v. *Canal-Louisiana Bank and Trust Company,* 239 U.S. 520, 60 L. Ed. 417, 36 S. Ct. 194 (1916).

It is significant that before the above facts were called to the attention of the Court of Appeals it adopted respondent's construction of the *Kipp* case. *Central-States Corp.* v. *Luther,* 215 F.(2d) 38 (C.A. 10, 1954). In the instant cause, however, after the provisions of Section 82-171 were analyzed and discussed, the Court of Appeals made no further reference to the *Kipp* case.

Respectfully submitted,

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